



Costs Decision

Site visit made on 11 February 2020

by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2020

Costs application in relation to Appeal Ref: APP/R3325/W/19/3238978 The Barn, Sutton Bridge Farm, Sutton Montis, Yeovil, Somerset

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr P Ruckert for a full award of costs against South Somerset District Council.
 - The appeal was against the refusal of the Council to grant prior approval under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for the change of use of an existing agricultural building to a dwellinghouse.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant states that the Council's planning office refused to engage with him during the course of the prior approval application process, despite a number of emails sent by his agent. These provided additional information to highways queries; sought confirmation that the planning officer had all the information necessary to determine the application; and finally provided information to confirm that the property is an agricultural unit. At no time did the case officer respond to these emails or make contact in any way.
4. Paragraph 38 of the National Planning Policy Framework (NPPF) makes it clear that Local Planning Authorities should approach development in a positive and creative way, and work proactively with applicants. However, the head of planning at South Somerset District Council appears to have a different agenda to this, and an absolute lack of willingness to give applicants the ability to provide additional information or to answer queries raised direct. He clearly has a very cynical view of agents, which is unfortunate, and clearly does not like Class Q as a concept, especially when South Somerset DC is short of its 5 year housing supply and Class Q conversions should be being accepted as a way to increase the delivery of homes in the District.
5. The lack of willingness to engage with the applicant and the stated desire of the Council to basically abdicate its responsibility in the decision making process and to leave this up to the Planning Inspectorate has led to increased costs and unnecessary delay. The applicant should not be having to appeal the case.

6. In response, the Council disputes that it has acted in an unreasonable manner, and considers that costs should not be awarded. It states that based on the information submitted, and that gathered by the case officer, it considered, on the balance of probability, that the building in question had not been used as part of an agricultural trade or business. It further states that the Council has no obligation to seek further information from the agent or applicant in the case of a prior notification application, and that in these circumstances the case officer acted reasonably in determining the application on the information they had.
7. The evidence before me shows that following submission of the prior approval application on 4 March 2019, the applicant became aware of the comments from the highway authority and sent an email to the Council in response to these comments, on 19 March 2019, putting forward a revised location plan. The email also asked for details of the planning officer dealing with the application, indicating it would be good to be able to discuss the highways issues and any other matters of concern which may require clarification. However, it does not appear that the Council responded to this email.
8. Nor does it appear that the Council responded to an email from the applicant's agent dated 24 April 2019, which asked whether the Council had any further queries in respect of the prior approval application. A further email to the Council from the agent, dated 30 April 2019, also appears to have gone unanswered, with the Council simply moving to issue a refusal to grant prior approval on the following day – 1 May 2019.
9. The lack of contact or response by the Council seems to run counter to the comment in its 'Acknowledgement of Prior Approval Notification' dated 6 March 2019, which states 'We may contact you if we need more information before making our decision'. Whilst this does not state that contact will definitely be made, the applicant could have had a reasonable expectation that any queries he raised would have been responded to. In this regard the Council's actions do not seem to accord with the proactive approach sought through paragraph 38 of the NPPF, highlighted by the applicant, and taking all of these points into account, I conclude that the Council has acted unreasonably in this case.
10. However, an award of costs can only be made if unreasonable behaviour leads to unnecessary or wasted expense, and I do not believe that to be the case here. The Council did not feel able to grant prior approval, and it has been necessary, therefore, for this matter to be decided through the appeal process. Whilst I do not share the Council's view regarding the status and former use of the agricultural building in question, I have found further problems with the application, as detailed in my appeal decision, which have caused me to conclude that the appeal should be dismissed. The appeal has been necessary to determine this application, and the applicant has therefore not incurred any unnecessary expense.
11. Taking all the above points into account I find that although the Council has acted unreasonably, this has not resulted in the applicant incurring unnecessary or wasted expense, as described in the PPG. The application for costs is therefore refused.

David Wildsmith

INSPECTOR